

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2023010221

SIMI VALLEY UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

DECISION

March 24, 2023

On January 9, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Simi Valley Unified School District, naming Parent on behalf of Student. Administrative Law Judge Cararea Lucier heard this matter by videoconference on January 31, 2023, and February 1, 2, and 7, 2023.

Howard Fulfroft, attorney at law, represented Simi Valley Unified School District. Sean Goldman, Assistant Superintendent of Student Support Services, attended all hearing days on Simi Valley's behalf. Parent represented Student at the hearing. Parent attended portions of the hearing days on January 31, 2023, and February 1, 2023.

OAH continued the matter to March 6, 2023, for written closing briefs. The record was closed, and the matter submitted on March 6, 2023.

ISSUE

Did Simi Valley Unified School District's individualized education program, referred to as IEP, developed on October 13, 2022, offer Student a free appropriate public education, referred to as FAPE, consistent with its obligations under the Individuals with Disabilities Education Act, referred to as the IDEA, its implementing regulations, and related California law and regulations?

JURISDICTION

This hearing was held under the IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected.
(20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) and (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, 56505;

Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Simi Valley had the burden of proof in this matter. (*J.G. v. Department of Education* (9th Cir. 2019) 772 Fed.Appx. 567.) The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was a 15-year-old boy who qualified for special education and related services under the eligibility category of emotional disturbance. Simi Valley Unified School District was the local educational agency responsible for offering Student a FAPE at all times relevant to this matter.

ISSUE: DID SIMI VALLEY UNIFIED SCHOOL DISTRICT'S IEP DEVELOPED ON OCTOBER 13, 2022, OFFER STUDENT A FAPE, CONSISTENT WITH ITS OBLIGATIONS UNDER THE IDEA, ITS IMPLEMENTING REGULATIONS, AND RELATED CALIFORNIA LAW AND REGULATIONS?

Simi Valley contends it offered Student a FAPE in the October 13, 2022 IEP. It asserts that it complied with the IDEA, federal regulations, and related California law and regulations. Specifically, Simi Valley contends Student no longer required a placement in a residential treatment center, and that it offered Student an appropriate placement and services in the least restrictive environment.

Student contends Simi Valley's October 13, 2022 IEP was not appropriate for Student. Student argues Parent wants badly for Student to come home and attend a

less restrictive placement, but she is concerned and afraid for his safety and the safety of others. Student contends he has not made progress at his current residential treatment center and continues to self-harm and self-medicate with alcohol and marijuana. Student alleges his goals have been recycled from previous IEPs and that his behavior plan addresses blurting out in class but does not address the serious behaviors that caused him to be placed in a residential treatment center.

The IDEA requires school districts to offer eligible students a FAPE in the least restrictive environment. When a school district seeks to demonstrate that it offered a FAPE, the legal tribunal applies a two-part analysis. First, the school district must prove it complied with the procedures set forth in the IDEA. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 206-207.) Second, the school district must prove the IEP was designed to meet the child's unique needs, and reasonably calculated to enable the child to receive educational benefit. (*Ibid*; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988].) Simi Valley bears the burden of proof that Student's October 13, 2022 IEP met the procedural and substantive standards under the IDEA.

Student became eligible for an IEP on October 26, 2020, in the midst of the Covid-19 school closures. Although he was enrolled in seventh grade, Student was not participating in distance learning. He did not attend school and instead spent his days and nights engaged in risky, unhealthy, and occasionally criminal behavior. Student abused alcohol and drugs. He left the house to hang out with peers affiliated with gangs. The police arrested him four times on misdemeanors. He was physically and verbally aggressive toward Parent. On at least one occasion, he ran away from home. In

2020, Student was placed in a psychiatric hospital on numerous occasions due to anger outbursts, self-mutilation, manic behavior, and suicidal threats. He was diagnosed with

- attention deficit hyperactivity disorder,
- disruptive mood dysregulation,
- oppositional defiance disorder, and
- post-traumatic stress disorder.

Student was found eligible for special education and related services under the category of emotional disturbance.

On March 4, 2021, Student's IEP team, including Parent, placed him in a residential treatment center in Provo, Utah. Provo Canyon School was a level 14, locked, all-boys residential treatment center. Student received 1,575 minutes per week of specialized academic instruction and 1,440 minutes per week of residential treatment services. Additionally, Student received 120 minutes per week of group counseling, 60 minutes per week of individual counseling, and 60 minutes per week of social work services.

On January 13, 2022, Student's IEP team met to discuss his discharge from Provo Canyon to a less restrictive residential treatment center in California. Simi Valley offered Student a placement at New Haven Youth and Family Services, beginning on February 22, 2022, during his eighth-grade year.

New Haven was a residential treatment center and California certified non-public school in Vista, California. New Haven was a small, all-boys school with 22 students. 10 students lived on campus in residential homes and 12 students were bused in each day from local school districts. There were three classrooms, each with a maximum of eight

students, one credentialed teacher, and one paraprofessional aide. The students attended school from 8:30 AM to 3:15 PM, Monday through Friday. The students took seven classes: English Language Arts, mathematics, science, history, physical education, study skills, and an elective of either art or woodshop. New Haven used a positive behavioral system for all students in which students were assigned points in eight categories:

- on-task behavior;
- staying in assigned areas;
- impulse control;
- cooperation with adults;
- cooperation with peers;
- avoidance of verbal conflict;
- avoidance of physical conflict; and
- positive engagement in the program.

Based upon the daily average of point scores students could be in a green zone, excelling, the yellow zone, meeting minimum expectations, or the red zone, not meeting expectations.

Student had a positive transition from Provo Canyon to New Haven. Student was charismatic, friendly, and energetic. He was funny, although he sometimes crossed the line into inappropriate humor, such as trying to rub the school director's bald head for good luck. Student was an excellent athlete and enjoyed playing football and skateboarding. He excelled at art and woodshop. On Fridays, Student assisted in the New Haven student store. He was well liked by peers and staff. He had the rare ability to talk with anyone.

Despite the positive transition, Student had several behavioral incidents at New Haven and while visiting home on therapeutic home visit passes. On April 3, 2022, while visiting home, Student punched a mirror and threw objects. On April 29, 2022, while on the New Haven campus, he threw rocks that hit a parked car. On May 9, 2022, he punched a classmate in the face and head after the peer punched him in the stomach. On May 19, 2022, he engaged in self-harm by cutting himself with a hanger. On May 26, 2022, he got into a verbal fight with a peer with the intent to engage in a physical fight. Overall, he continued to display behaviors that were impulsive and immature. He gravitated toward peers engaging in unhealthy behavior. He also frequently used profanity and had inappropriate conversations, sometimes on sexual topics.

Student was not motivated by academics but completed his assignments at New Haven. He was polite to his teacher, saying "yes sir" and "no sir." He attended all classes even though he was not forced to do so and could have refused. He earned passing grades in all classes.

On October 13, 2022, during Student's ninth-grade year, Simi Valley convened Student's annual IEP. Among other things, Simi Valley recommended changing Student's placement from a residential treatment center to a less restrictive setting. Parent disagreed. The procedural and substantive appropriateness of the October 13, 2022 IEP is at issue in this due process matter.

PROCEDURAL COMPLIANCE: THE IEP DOCUMENT

A school district must ensure that an IEP document contains all components required by the IDEA and California special education law. The IDEA does not require the IEP document to be in any particular format as long as all the contents requirements are included. (34 C.F.R. § 300.320.)

PRESENT LEVELS OF PERFORMANCE

An IEP must include a student's present levels of performance. The present levels of academic achievement and functional performance must include how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).)

In developing the IEP, the IEP team must consider the strengths of the child; the concerns of the parents for enhancing their child's education; information about the child provided by or to the parents; the results of the most recent assessments; the academic, developmental, and functional needs of the child; and any lack of expected progress toward the annual goals. (20 U.S.C. § 1414(d)(3)(A), (d)(4)(A)(ii); 34 C.F.R. § 300.324(a), (b)(1)(ii); Ed. Code, § 56341.1, subds. (a), (d).)

The October 13, 2022 IEP included a comprehensive summary of Student's present levels of academic achievement and functional performance. At the meeting, the team discussed Student's progress on past goals and his current levels of functioning. Student met his behavioral goal from the previous year but still disrupted his classroom environment by yelling. He was anxious and angry about the uncertainty over his

continued placement at New Haven, which impacted his academic engagement. He alternated between days where he made academic strides and days in which he was not engaged. He frequently used profanity to express his indifference to the educational process, telling staff he "doesn't give a ____." He made progress on previous academic goals but did not meet the target rates of 80 percent achievement in tasks related to reading, writing, or mathematics. The team also discussed Student's strengths, including that he was likeable, energetic, and resilient. He won an academic award in spring 2022, and was a top performer in woodshop.

The IEP document described Student's functioning in the areas of

- academic achievement,
- cognitive,
- communication,
- motor abilities,
- social emotional and behavioral,
- vocational,
- self-care,
- independent living,
- health, and
- preparation for transition to adult life.

His present levels were based upon classroom observations and progress on goals.

The IEP included a description of how Student's disability affected his involvement and progress in general education; specifically, that his social emotional needs, aggressive and unsafe behaviors, and attention deficits impaired his ability to participate in a

general education setting. Simi Valley appropriately included Student's present levels of academic achievement and functional performance in the October 13, 2022 IEP document.

ANNUAL GOALS

An IEP must include appropriate annual goals in all areas of need. The IEP must contain a statement of measurable annual goals designed to meet the student's needs that result from his disability to enable the student to be involved in and progress in the general curriculum, and meet each of the child's other educational needs that result from his disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) The IEP team develops measurable annual goals that address the student's areas of need and which the student has a reasonable chance of attaining within a year. (Ed. Code, § 56344; *Letter to Butler* (OSERS Mar. 25, 1988); U.S. Dept. of Educ., Notice of Interpretation, Appendix A to 34 C.F.R., part 300, 64 Fed. Reg. 12,406, 12,471 (1999 regulations).) The purpose of goals is to assist the IEP team in determining whether the student is making progress in an area of need. As such, the IEP must also contain a statement of how the student's goals will be measured and when the parent will receive periodic reports on the student's progress towards his goals. (20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the offered educational services. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

The October 13, 2022 IEP included appropriate annual goals in all areas of Student's need. Simi Valley offered Student annual IEP goals in the areas of reading, mathematics, writing, social/emotional/behavioral, and transition to adult life. Michael

Militante, Student's special education teacher at New Haven, presented the IEP team with draft goals in the areas of reading, writing, and mathematics. Student was in ninth grade but read below grade level expectations. He could answer literal comprehension questions using facts in the text. However, he had difficulties with inferences, which meant he struggled to form conclusions based upon the materials he read and his own reasoning. The team developed an annual reading goal for Student to support three inferences within ninth-grade level material with evidence from the text. The goal was measurable because it required the special education teacher to take data and collect work samples showing Student could achieve the goal with 80 percent accuracy on two out of three trials. Jodi Loomis, Program Specialist for Simi Valley, and Mr. Militante agreed that Student could accomplish the reading goal within 12 months.

With respect to mathematics, Student could generally solve problems using the four operations: addition, subtraction, multiplication, and division. However, he struggled to apply these concepts to real world problems. For example, if told that a can of paint covered 100 square feet of wall, he struggled to calculate how many cans of paint he would need to cover a 100-foot by 50-foot wall. The IEP team offered Student an annual goal that required him to solve real world mathematics problems involving all four operations with 80 percent correct in two out of three trials. The goal was measurable as written and tasked the special education teacher with collecting data on Student's progress through work samples and other teacher-recorded data. Student could reasonably achieve the mathematics goal within 12 months.

In the area of writing, Student struggled to independently write at a ninth-grade level. He usually wanted to write about his preferred topics rather than the topic assigned. He required support to expand on his writing process past the initial

brainstorming phase. However, he also had strengths. He had a functional knowledge of punctuation and decent spelling. He benefitted from using graphic organizers to develop his writing. The IEP team developed a writing goal for Student to use a graphic organizer to produce clear and coherent writing with a score of 75 percent on a four-point rubric, on two of three opportunities. The goal was measurable as written because the special education teacher could collect data on his writing samples based upon his score on the rubric. Student could reasonably achieve the writing goal within 12 months.

Student's behavior impacted his education. He could be disruptive and impulsive in the classroom. He made inappropriate comments, used profanity, left his assigned area, and engaged in off-topic conversations. When he became stressed or had a conflict, he would become overwhelmed and dysregulated. The IEP team developed a goal requiring Student to self-initiate a coping strategy rather than acting out in the classroom in eight out of 10 opportunities. The purpose of this goal was to help him self-regulate when he felt overwhelmed by his emotions. The goal was measurable as written and required the school-based therapist to take data on Student's use of coping strategies in the classroom. Student could reasonably achieve the behavior goal within 12 months.

The IEP team also developed an annual goal for Student in the area of post-secondary employment. At the time the IEP was written, Student was in ninth grade and did not have a clear idea of what he wanted to do after high school. Student was an excellent athlete. While he dreamed of a career involving baseball, he also considered a retail job, such as working for Zumiez, which sold skateboards, hats, and clothing. The IEP team developed a goal asking Student to complete a career interest inventory and research three jobs that matched his interests. The goal was measurable

and tasked the special education teacher with collecting data through work samples showing Student's ability to complete the goal on two out of three opportunities. Student could reasonably achieve the post-secondary transition goal within 12 months.

PLACEMENT, SERVICES, AND OTHER SUPPORTS

An IEP must include a description of the placement, services, and accommodations offered to the student. An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children. (34 C.F.R. § 300.320(a)(4).)

A school district must make a formal, written offer of placement and services in the IEP document. (*Union v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526.) Additionally, an IEP must include the projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications. (34 C.F.R. § 300.320(a)(7).) An IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. (34 C.F.R. § 300.320(a)(5).)

School districts, as part of a special education local plan area, must have available a continuum of program options to meet the instructional and service needs of special education students. (34 C.F.R. § 300.115(a); Ed. Code, § 56360.) This continuum of program options must include, but is not limited to:

- regular education;
- resource specialist programs;
- designated instruction and services;
- special classes; nonpublic,
- non-sectarian schools;
- state special schools;
- specially designed instruction in settings other than classrooms;
- itinerant instruction in settings other than classrooms; and
- instruction using telecommunication in the home, hospitals, or institutions.

(34 C.F.R. § 300.115; Ed. Code, § 56361.)

In determining placement, a school district must consider a continuum of alternative placements. (34 C.F.R. § 300.115(b); Ed. Code, § 56342, subd. (b).) A school district is only required to consider those placements on the continuum that may be appropriate for a particular child. There is no requirement that the IEP team members discuss all options, so long as alternative options are available. (*L.S. v. Newark Unified School Dist.*, (N.D.Cal, May 22, 2006, No. C 05-03241 JSW) 2006 WL 1390661.)

Student's placement is the crux of the matter in this dispute. Parent did not agree with Student's discharge from a residential treatment center setting and returning home. The substantive appropriateness of the change of placement is discussed later in this Decision. However, with respect to its procedural obligations under the IDEA, Simi

Valley made an appropriate, clear, written offer of placement and services in the October 13, 2022 IEP. The team considered the continuum of placement options, including continued placement in a residential treatment center, non-residential non-public schools, county programs, and a segregated program for emotionally disturbed students on a comprehensive high school campus. The October 13, 2022 IEP included an explanation of the extent Student would not participate with nondisabled children in the regular class, due to his social emotional and behavior needs.

The IEP team discussed the process of discharging Student from New Haven and transitioning him to a non-residential setting, with placement at Phoenix School. The team offered Student continued placement at New Haven from October 13, 2022, until October 30, 2022. At New Haven, Student would receive:

- 360 minutes per day of specialized academic instruction;
- 60 minutes per week of individual school-based counseling;
- 120 minutes per week of group school-based counseling;
- 60 minutes per week of school-based social work services; and
- 1,440 minutes per day of residential treatment services.

On October 31, 2022, Student would return home and begin placement at the Phoenix School. At the Phoenix School, Student would receive:

- 1,945 minutes per week of specialized academic instruction;
- 60 minutes per week of individual, educationally related social emotional services, referred to as ERSSES, counseling;
- 45 minutes per week of group ERSSES counseling;
- 30 minutes per week of ERSSES social work services;

- 240 minutes per month of collaborative educational supports, referred to as COEDS, social work services; and
- 960 minutes per month of COEDS behavior intervention services.

Simi Valley also appropriately included Student's accommodations within the October 13, 2022 IEP document. The team offered Student four accommodations related to his educational setting and schedule: extended time to complete assignments, extended time on tests, preferential seating, and frequent breaks. The team offered Student three accommodations related to self-regulation: use of self-monitoring strategies, checklist for steps of tasks, and reinforcement of positive behavior through preferred activities. The team offered Student seven accommodations related to teacher directions: questions would be presented orally, answer choices would be read aloud, frequent checks for understanding, praise for specific behavior, on-task reminders, tasks presented in small chunks, and directions would be repeated. The team offered Student five accommodations related to organization and study skills:

- graphic organizers,
- study guides,
- use of notes on tests and quizzes,
- a multiplication chart, and
- a number line.

Additionally, the team offered Student the accommodations of using a calculator on math tests and doing every other math problem on assignments. Simi Valley complied with procedural requirements regarding accommodations in the IEP document.

Overall, the October 13, 2022 IEP was procedurally compliant with respect to placement, services, and accommodations.

SPECIAL FACTORS AND TEST ACCOMMODATIONS

The IEP must include a consideration of special factors, including

- behavioral supports,
- language support for students with limited English proficiency,
- supports for visually impaired,
- blind,
- hearing impaired and deaf students,
- and assistive technology devices and services. (34 C.F.R. § 300.324(a)(2).)

When a child's behaviors impede the child's learning or that of others, the IDEA requires that the IEP team consider the use of positive behavioral interventions and supports and other strategies to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).)

The October 13, 2022 IEP included a legally sufficient description of the special factors considered and offered to Student. The team discussed potential special factors at the IEP team meeting. Student did not require low incidence equipment or assistive technology. He did not have a visual or hearing impairment and as such did not require specialized services or equipment in those areas. He was not an English language learner.

Student's behavior did interfere with his learning, so the team developed a behavior intervention plan and offered Student a behavior goal, as discussed above. The behavior intervention plan addressed Student's verbal disruptions in class. The team considered the antecedents to Student's behavior, such as his feeling of being overwhelmed in class, and the consequences of the negative behavior, which included

avoiding non-preferred tasks and getting a reaction from teachers and peers. The team identified positive replacement behaviors for Student, including coping strategies, and strategies for his teachers. The team also identified services and offered weekly counseling services to support Student's behavior intervention plan.

Each IEP must contain a statement of any individual appropriate accommodations that are necessary to measure the child's academic achievement and functional performance on statewide and districtwide assessments. (34 C.F.R. § 300.320.)

At the October 13, 2022 IEP team meeting, the team considered Student's need for accommodations on statewide and districtwide assessments. The October 13, 2022 IEP included a statement that Student was exempt from district and statewide testing due to his grade level. Ninth grade students did not take the California Assessment of Student Performance and Progress.

EMERGENCY CONDITIONS

IEPs must include a description of the means by which the IEP will be provided under emergency conditions, in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days. (Ed. Code, § 56345, subd. (a)(9).)

The October 13, 2022 IEP included an emergency conditions provision worksheet describing the instruction and services Student would receive in the event of an emergency lasting more than 10 school days. The IEP also included Parent's comments that Student preferred in-person instruction. In the event of an emergency

lasting more than 10 school days, Student would receive distance learning through technology, including online interaction with a teacher, the use of printed materials, and teacher feedback.

TRANSITION GOALS AND SERVICES

IEPs must include a statement of transition goals and services at the first IEP in effect when the child turns 16 years old. (34 C.F.R. § 300.320(b).)

The October 13, 2022 IEP included an appropriate individualized transition plan for Student. The individualized transition plan was based upon the results of an age-appropriate transition assessment, the Career Interest Inventory, as well as a student interview. The IEP team developed a goal in the area of post-secondary employment to support the individualized transition plan.

In sum, the October 13, 2022 IEP document was procedurally compliant because it included all components required by the IDEA and California special education law.

PROCEDURAL COMPLIANCE: THE IEP TEAM MEETING

A school district must ensure that the IEP team meeting meets all procedural requirements, including scheduling the meeting with proper notice, including necessary participants, and allowing for parent participation. To ensure parent participation in placement determinations, public agencies must provide parents with notice of meetings that will be held to decide placement. (34 C.F.R. § 300.501(b)(1).) The IEP team meeting must be scheduled at a mutually agreed upon time and place. (Ed. Code, § 56341.5(c).)

NOTICE

Ms. Loomis ensured that the October 13, 2022 IEP was scheduled with proper notice to Parent. Simi Valley offered Parent three dates. Ms. Loomis emailed Parent several times to accommodate Parent's schedule. On September 27, 2022, Ms. Loomis sent Parent an invitation for the October 13, 2022 IEP, and Parent confirmed, via email, that she would attend. Simi Valley also offered Parent a copy of her procedural safeguards with the invitation to the IEP team meeting. Simi Valley complied with all procedural requirements regarding the scheduling and notice of the October 13, 2022 IEP team meeting.

REQUIRED IEP TEAM PARTICIPANTS

A school district must ensure the IEP team includes all legally required participants. The IEP team must include: one or both of a student's parents; no less than one general education teacher if the student is, or may be, participating in the regular education environment; no less than one special education teacher or, if appropriate, a special education provider of the student; a representative of the district who is qualified to provide or supervise specially designed instruction, and is knowledgeable about the general education curriculum and the availability of district resources; an individual who can interpret the instructional implication of assessment results; at the discretion of the parents or district, any other individual who has knowledge or special expertise regarding the student, including related services personnel, as appropriate; and whenever appropriate, the student with exceptional needs. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).)

The October 13, 2022 IEP team meeting included all legally required participants. The team consisted of nine individuals, including Parent. Ms. Loomis served as the Simi Valley administrator for the meeting. She facilitated the meeting, provided the agenda, and took meeting notes. From New Haven, Mr. Militante, Student's special education teacher, Christopher Kates, Community Relations Liaison, and Brittany Losse, Treatment Manager, attended. Ruben Ramirez, Ventura County special education local plan area Residential Placement Consultant, attended to support the team with the placement discussion. Stacey Afsahi, Assistant Principal of Phoenix School, attended the meeting to discuss the program at Phoenix and answer any questions Parent had. Aliah Maki, COEDS Program Manager, attended the meeting to discuss COEDS collaborative educational services, a wrap-around mental health service that provided services in the home setting. Simi Valley was not required to include a general education teacher at the meeting because Student was in a residential treatment center and was not prepared to transition to a regular education setting. After Parent toured the campus of Simi Valley High School, all members of the IEP team were in consensus that Student would not be participating in the regular education setting at the time. Simi Valley complied with all procedural requirements regarding the participants of the October 13, 2022 IEP team meeting.

PROCEDURAL SAFEGUARDS

A school district must provide parents with a copy of their procedural safeguards. State and federal law require districts to provide the parent of a child eligible for special education with a copy of a notice of procedural safeguards upon initial referral, and thereafter at least once a year, as part of any assessment plan, and at other designated times. (20 U.S.C. § 1415(d)(1); 34 C.F.R. § 300.504(a); Ed. Code, § 56321, subd. (a).) The

notice must include a full explanation of all procedural safeguards and be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent. (20 U.S.C. § 1415(d)(2); 34 C.F.R. §§ 300.503(c)(1), 300.504.) Furthermore, at each IEP team meeting, the district must inform a parent of state and federal procedural safeguards. (Ed. Code, § 56500.1, subd. (b).

On September 27, 2022, Simi Valley provided Parent with a legally sufficient copy of her procedural safeguards attached to the notice of the IEP team meeting. The procedural safeguards were in Parent's native language of English. Simi Valley offered Parent another copy of the procedural safeguards at the October 13, 2022 IEP team meeting. Parent did not have any questions about her procedural safeguards.

PARENTAL PARTICIPATION AND PREDETERMINATION

The IDEA guarantees parents the right to participate in meetings with regard to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b).) The IDEA requires school districts to ensure the parents of disabled children are members of any group that makes decisions about their child's educational placement. (34 C.F.R. § 300.327; 34 C.F.R. § .501 subd. (c)(1) (2006).)

School districts may not unilaterally predetermine a child's special education and related services prior to an IEP team meeting. (*Deal v. Hamilton County Bd. Of Educ.* (6th Cir. 2004) 392 F.3d 840, 858., cert. denied, 546 U.S. 936 (U.S. 2005).) School administrators and staff must enter the IEP team meeting with an open mind and must meaningfully

consider the parents' input. (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed. Appx. 342, 344; see also, *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

Parent attended and participated in the October 13, 2022 IEP team meeting. Parent asked questions about Student's progress, grades, and academic levels. She participated in the goal development. She had many concerns about Student's social emotional functioning, which the team addressed. Parent was worried that if Student was discharged from a residential setting and returned home, he would be aggressive towards his family and become involved with gangs. She was concerned that he still had significant behavioral challenges at school and when visiting home on therapeutic passes. Mr. Ramirez empathized with Parent and her concerns, and explained the role of an educationally-based residential treatment center. While at Provo Canyon and New Haven, Student developed skills and competencies which would allow him to transition to a less restrictive environment. At the time of the October 13, 2022 IEP, Student was not eloping from campus, self-harming, or expressing suicidal ideation. He was ready for discharge. Ben Mulvey, Director of Special Education for New Haven, explained to Parent that they did not expect students to have zero behaviors before discharge, and that they believed he was ready.

Parent also participated in the discussion about placement options and expressed many concerns. She was worried that if Student attended Phoenix, he might encounter a peer with whom he had previously run away from home. The IEP team investigated Parent's concerns and let her know that the specific peer was not attending Phoenix. She was also concerned about whether students at Phoenix dressed like gang members. The IEP team told Parent about the dress-code at Phoenix. Parent raised concerns that

Student might run away from the Phoenix campus. The team responded by explaining that students at Phoenix are carefully monitored and not left alone. Even when using the restroom, a staff member stands outside the door. In the event a student leaves the Phoenix campus, two campus staff members follow the student and eventually contact law enforcement if the student gets to a certain distance and refuses verbal prompts to return. Parent expressed concerns that if Student arrived at Phoenix intoxicated, the school would send him home and Student would not receive access to his education that day. The team responded by explaining that students at Phoenix are checked every day for contraband and illicit substances. The team acknowledged that intoxicated students would not be allowed to stay at school, and that Phoenix would contact a parent or medical professional, depending on the level of intoxication.

The evidence overwhelmingly showed that Parent participated in the October 13, 2022 IEP team meeting. She asked many questions and expressed concerns. Furthermore, Simi Valley did not predetermine the placement offer. Although the IEP team had discussed placement at the Phoenix School at previous IEP team meetings, they approached the October 13, 2022 IEP team meeting with open minds and engaged with Parent's concerns. Although Parent did not ultimately agree with Simi Valley's offer to move Student to a less restrictive placement, she actively participated in the October 13, 2022 IEP team meeting.

SUBSTANTIVE APPROPRIATENESS OF THE IEP

Students eligible for IEPs are entitled to special education and related services to address the child's unique needs resulting from the disability. (34 C.F.R. § 300.39 (b)(3).) The IDEA requires States to provide a FAPE to all eligible students. (*Endrew F. v. Douglas County School Dist.* RE-1 (2017) 580 U.S. 386 [137 S.Ct. 988, 993].) States are required to

provide instruction calculated to "confer some educational benefit" by offering an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Id.* at 998.)

The "educational benefit" to be provided to a student requiring special education is not limited to addressing the student's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

A focus on the particular child is at the core of the IDEA. (*Endrew F. v. Douglas County School Dist., supra*, 137 S.Ct. 988, 992.) The IEP team addresses a student's unique needs by assessing the child in all areas of suspected disability, documenting the needs in the present levels of performance sections of the IEP, and offering the child appropriate goals, services, accommodations, and special factors to meet the child's needs.

"In determining what it means to 'meet the unique needs' of a child with a disability, the provisions governing the IEP development process are a natural source of guidance: It is through the IEP that '[t]he free appropriate public education required by the Act is tailored to the unique needs of' a particular child." (*Id.* at 1000.)

SUBSTANTIVELY APPROPRIATE GOALS

Simi Valley offered Student appropriate annual goals in all areas of need in the October 13, 2022 IEP. The IEP team considered Student's present levels of functioning when developing the goals. As discussed, Student was behind grade level in reading, mathematics, and writing. Based on these identified academic needs, Simi Valley

offered Student goals in the areas of reading, mathematics, and writing. The academic goals were tailored to address Student's specific academic needs. Student also had behavioral needs, which the IEP team addressed in a goal. Finally, the team offered Student a post-secondary employment goal to support his individual transition plan. There was no evidence that Student had any additional needs which required goals. Mr. Ramirez, Ms. Loomis, Ms. Losse, and Mr. Militante all credibly testified that the IEP team offered Student appropriate goals in all areas of need. Parent did not request any additional goals at the October 13, 2022 IEP team meeting, or criticize the goals offered. The preponderance of the evidence showed that Simi Valley offered Student annual IEP goals in all areas of need.

APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

School districts are required to provide each special education student with an appropriate program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114 (a)(2); Ed. Code, §§ 56031, 56033.5.) The IDEA also requires, to the maximum extent appropriate, that a child with a disability be educated with children who are not disabled. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56040.1, subd. (a).)

Specific educational placement means that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. (Cal. Code Regs., tit. 5, § 3042.)

When determining whether a placement is the least restrictive environment for a child with a disability, four factors must be evaluated and balanced:

- the educational benefits of full-time placement in a regular classroom;
- the non-academic benefits of full-time placement in a regular classroom;
- the effect the presence of the child with a disability has on the teacher and children in a regular classroom; and
- the cost of placing the child with a disability full-time in a regular classroom. (*Ms. S. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1136-1137; *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.)

An IEP placement in a residential treatment center is appropriate if it necessary to provide the student special education and related services, and if a student is not capable of deriving educational benefit outside of a residential placement. (*Ashland School District v. R.J.* (9th Cir. 2009) 588 F.3d 1004.) A student's issues related to medical, social, or emotional problems apart from the learning process and manifesting away from school grounds may not justify an IEP placement in a residential treatment center if it is not educationally necessary. (*Id.*) Risky behaviors outside of school, including defiance in

the home, sneaking out, dishonesty, and inappropriate relationships do not necessarily mean an IEP team should place the child in a residential treatment center, especially if the child is able to attend school, turn in assignments, and earn good grades. (*Id.*)

Simi Valley offered Student an appropriate placement in the least restrictive environment in the October 13, 2022 IEP. At the time of the October 13, 2022 IEP team meeting, Student was ready to be discharged from the highly restrictive setting of a residential treatment center.

On August 17, 2022, and September 8, 2022, Simi Valley convened IEP team meetings for Student to discuss placement and Student's discharge from New Haven. The IEP team considered a worksheet with criteria for placement and discharge from the residential treatment center setting. Student was placed at New Haven because he required a program with a residential component to address his intensive social emotional and behavioral needs. Simi Valley identified four competencies and skills Student should display before returning to a less restrictive environment:

1. 90 percent attendance over one semester;
2. 90 percent work completion over one semester;
3. independent use of strategies to attend to non-preferred activities; and
4. independent maintenance of self-control and seeking attention in appropriate ways on campus and in the classroom.

As of August 17, 2022, Student met the criteria to be discharged to a less restrictive educational setting.

Student had received maximum benefit from the residential setting. Further placement in a residential setting carried risks that Student would regress and become

institutionalized. Student was becoming despondent about his continued placement and did not think his efforts and progress were being acknowledged. He also self advocated for a less restrictive placement where he would have the opportunity to play baseball and socialize with girls. Student's therapist, Ms. Losse, observed that Student felt hopeless by his continued placement at New Haven. Student was a highly goal-oriented person and he thought he had reached his goals and was ready to be discharged before the beginning of the 2022-2023 school year. He did not know why he was still at New Haven. Although Student continued to have social emotional and behavioral needs that required special education supports, he no longer required the 24 hour per day, seven days per week, residential setting to receive educational benefit.

The IEP team discussed a continuum of placement options for Student. Student wanted to attend his home school, Simi Valley High School, a large comprehensive high school. Simi Valley also housed a separate special education program for mild to moderately impaired emotionally disturbed students on the Simi Valley High School campus. The team also discussed nonpublic schools in the area and the Phoenix School, a program through Ventura County Office of Education. The Simi Valley members of the IEP team recommended placement at the Phoenix School. However, Parent still had concerns about placement. Simi Valley wanted Parent to feel comfortable with the placement proposed. After the August 17, 2022 IEP team meeting, Parent toured the program for emotionally disturbed students on the Simi Valley High School campus, and the Phoenix School. The IEP team reconvened on September 8, 2022, to discuss placement and Parent's concerns. After touring, Parent did not believe the program housed on the Simi Valley High School campus would be appropriate for Student.

At the annual IEP team meeting on October 13, 2022, Simi Valley continued to offer the Phoenix School as the appropriate placement for Student in the least restrictive environment. Phoenix School was a small, alternative school for middle and high school students with emotional disturbances. The school was run by the Ventura County Office of Education. At the time of the October 13, 2022 IEP team meeting, the school had 45 students enrolled, with a maximum capacity of 60 students. Each class had a maximum of 10 students, with one credentialed teacher and two paraprofessionals. The school had a traditional schedule, from 8:45 AM to 3:15 PM, five days per week. Students took core academic classes and electives. For the last 30 minutes of the school day, the students received incentives such as time to go to the gym, play video games, or play football games with teachers. Students also had the opportunity to work on vocational skills at the adjacent career vocational center. The school took the students on field trips one time per month.

Phoenix School was designed for students with intensive social emotional and behavioral needs. The cornerstone of the program was that educationally related social emotional services, referred to as ERSSES, were embedded in the program. The majority of the students had anxiety, depression, or internalizing behavior. The students all received individual and group ERSSES counseling and had access to counselors at all times. The Phoenix School had a behaviorist who developed behavior plans for the students. The students received daily points for positive behavior.

The Phoenix School was designed to replicate the day program of a residential treatment center. For many students, Phoenix School was a short-term placement designed to transition students from the residential setting to a less restrictive environment, such as a comprehensive high school. It was an enclosed facility. Students at Phoenix were closely monitored at all times, including during passing

periods, restroom breaks, and in the yard. When Students arrived at school each morning they were searched and required to turn their pockets out. Students were not allowed to bring backpacks to school and their lunch bags were checked. Students were not allowed access to their cell phones during the school day unless they earned the privilege of using it for the last 30 minutes of the day by receiving a 90 percent score on their daily behavior plan. When students got into conflicts, the staff at Phoenix used restorative justice practices.

Parent was worried that if Student attended Phoenix, he would revert to risky behavior he had displayed before being placed in a residential treatment center. Student tended to change his behaviors when around peers with maladaptive behaviors. She was worried that if Student attended Phoenix, he would use drugs and alcohol, leave the house without permission, and hang out with peers affiliated with gangs. She worried he would be physically aggressive at home. Even while at New Haven, Student had behavioral incidents and days when his behavior was in the red zone. Parent worried that Student continued to use drugs and alcohol, although he generally refused drug tests while at New Haven. She believed Student's placement in a residential treatment center had saved his life. She worried that he would end up in jail, or worse.

Student was aware that Phoenix School was a possible placement for him. He wanted to return home. He was excited that the Phoenix School had male and female students. He expressed his commitment to sobriety, education, and compliance at home.

At the time of the October 13, 2022 IEP team meeting, Phoenix School was an appropriate placement for Student in the least restrictive environment. Student

continued to have intense needs in the areas of social emotional functioning and behavior, as well as below grade level academic skills. Parent's concerns are understandable. Student continued to display troubling behaviors, especially at home. On October 23, 2022, Student ingested alcohol and marijuana while on a home pass and Parent took him to the hospital emergency room. He continued to need intensive supports at school and in the home environment. However, while at New Haven, he demonstrated the competencies and skills that showed he was ready to transition to a non-residential setting. Under the IDEA, Student had the right to a placement in the least restrictive environment.

SUBSTANTIVELY APPROPRIATE SERVICES AND ACCOMMODATIONS

An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the activities described in federal regulations. (34 C.F.R. § 300.320(a)(4).)

Related services are supportive services that a disabled student requires to benefit from special education. (34 C.F.R. § 300.34.) Related services include developmental, corrective, and supportive services, including transportation. (*Ibid.*)

Simi Valley offered Student appropriate services and accommodations in the October 13, 2022 IEP. Student required substantial services to address his social emotional and behavioral needs. From October 13, 2022, through October 30, 2022, Simi Valley offered Student individual and group counseling, social work services, and residential treatment services. To address his academic needs, Simi Valley offered Student specialized academic instruction for the duration of his school day.

Beginning on October 31, 2022, Simi Valley offered Student services to support his placement at Phoenix School. Student would receive specialized academic instruction in all subjects. Simi Valley also offered ERSes and COEDS services. ERSes services were embedded within the program at Phoenix School. Simi Valley offered Student 60 minutes per week of individual ERSes counseling, 45 minutes per week of group ERSes counseling, and 30 minutes per week of ERSes social work services. ERSes counselors were all highly qualified, with master's degrees. The ERSes social worker served as a case manager, collaborating, attending meetings, and collaborating with COEDs services. Parent and Student would also have access to 24 hours crisis support.

COEDS was a wrap-around service that supported students in the home and school environment. There were three levels of COEDS supports. Simi Valley offered Student the highest level of COEDS. The IEP team offered Student 240 minutes per month of COEDS social work services and 960 minutes per month of COEDS behavior intervention services. Level three of COEDs would provide Student with services in his

home four or five times per week. The therapeutic services would address skill building in the areas of coping skills, friendships, social skills, and decreasing maladaptive behaviors. COEDS youth partners used

- activities,
- games,
- role playing,
- deep breathing, and
- coping exercises.

Parent would be provided a parent partner to access one time per week. Additionally, a family case manager would meet with the family one time per week for support and to provide parent coaching. COEDS service providers would work on the social emotional goal in Student's IEP and the behaviors identified in his positive behavior plan.

Simi Valley offered Student appropriate supports and services at the October 13, 2022 IEP team meeting. Specialized academic instruction for the duration of his school day would address his academic deficits and support his IEP goals in reading, mathematics, and writing. ERSSES services would support Student's intensive social emotional and behavioral needs at school. COEDS services would support Student at home so that he could access his educational program. Simi Valley offered Student appropriate related services to meet his educational needs and offer him a FAPE in the October 13, 2022 IEP.

Overall, the preponderance of the evidence demonstrates that Simi Valley offered Student a FAPE in the October 13, 2022 IEP. Simi Valley complied with the procedural

requirements of the IDEA with respect to the IEP document, the IEP process, and parent participation. Furthermore, Simi Valley met its substantive obligations under the IDEA, its regulations, and California special education law by addressing Student's unique needs resulting from his disability and offering him an IEP reasonably calculated to enable him to make progress appropriate in light of his circumstances. Simi Valley met its burden of proof that its IEP developed on October 13, 2022, offered Student a FAPE in the least restrictive environment.

CONCLUSIONS AND PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

Simi Valley's IEP developed on October 13, 2022, offered Student a FAPE, consistent with its obligations under the IDEA, its implementing regulations, and related California law and regulations.

Simi Valley prevailed on the only legal issue in this matter.

ORDER

1. Simi Valley offered Student a FAPE in the October 13, 2022 IEP, and as such may implement the IEP without Parent's consent.
2. All other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearing